IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1359 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HAJARIMAL VAGHAJI KHANDEVAL

Versus

MULSINH M RAVLAVAT

Appearance:

Mr. Godiawala for MR SI NANAVATI for the appellants.

RULE SERVED for Respondent No. 1-3

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 04/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

The appellants are the original claimants. They are parents of deceased Kantilal who died at the age of 22 years in a vehicular accident which took place on 10th March, 1982. They had filed MAC petition no. 136 of 1982 before the Motor Accident Claims Tribunal, Sabarkantha at Himmatnagar and claimed Rs. 1,73,000/- by way of compensation. However, the learned Tribunal by its judgment and award dated 7.7.1984 awarded only Rs. 27,500/-. Therefore, for the remaining amount of Rs. 1,45,500/-, the appellants-claimants have filed the present appeal.

2. The only question which arises in this appeal is regarding quantum of compensation awarded by the learned Tribunal to the claimants. In support of their claim, the claimant no. 1 Hajarimal Vaghaji Khandeval, father of the deceased Kantilal Hajarimal, has been examined at exh.39. As per his evidence, his deceased son Kantilal was serving for M.S. Super service station from 1973 to 1981. He was paid Rs. 250/- per month. He demanded more salary from the employer which was denied and therefore, he started his own business in the name of Khandellwal Automobiles in the year 1981. Unfortunately, thereafter he met with an accident on 10.3.1982 and died. At that time, his earning was Rs. 1000/- to Rs. 2000/- per month. This evidence was challenged in the cross-examination, but nothing substantial has come out. However, considering the oral as well as documentary evidence led by the claimants, the learned Tribunal has come to the conclusion that the datum figure of Rs.125/- per month can be taken which would come to Rs. 100/- per year and applying multiplier of 15 years, the learned Tribunal awarded in all Rs. 22,500/- for future loss of income to the parents of the deceased Kantilal. An amount of Rs. 5000/- was awarded by way of conventional amount on the head of mental agony and loss of expectancy of life etc. Thus, in all Rs. 27,500/- was awaded. In our considered opinion, Rs. 5000/- was rightly awarded by way of conventional amount on the head of mental shock, agony and loss of expectancy of life. However, considering the evidence of Hajarimal, father of the deceased Kantilal, we are of the considered opinion that the learned Tribunal ought to have taken datum figure of Rs. 400/- per month and not Rs. 125/because while taking datum figure of Rs. 125/- per month, the learned Tribunal has not at all taken into consideration future rise in the income of the deceased Kantilal who had already got eight years of experience as a mechanic with service station. However, we are unable to apply multiplier of 15 years which has been applied by

the learned Tribunal because the claimants are parents aged 63 and 56 respectively. In this view of the matter, in our view, at the most, multiplier of 8 years can be applied.

3. Accordingly, taking datum figure of Rs. 400/- per month, it would come to Rs. 4800/- per year and applying multiplier of eight years, it would come to Rs. 38,400/-. The learned Tribunal has awarded Rs.22,500/- for future loss of income. Thus, the appellants-claimants are entitled for additional amount of Rs. 15,900/- in this appeal under this head.

4. Accordingly, this appeal is partly allowed to the aforesaid extent only. Both the appellants-claimants do recover additional sum of Rs. 15,900/- from the respondents with proportionate costs and interest at the rate of 6% per annum from the date of the application. The respondent nos.1, 2 and 3 are held jointly and severally liable to pay the additional sum of Rs. 15,900/- with proportionate costs and interest. Rest of the claim of the appellants in this appeal stands dismissed.

5. Before parting, we must state that though duly served, no one appears for the respondents. Therefore, we have decided the appeal in their absence. However, we hereby direct the respondent no. 3 Insurance Company to deposit the additional awarded amount of Rs. 15,900/- with costs and interest at the rate of 6% per annum from the date of the application till its realisation within three months from the date of the receipt of the certified copy of the award with the Tribunal. On depositing the said amount, the Tribunal shall disburse the same to the appellants-claimants in equal proportions by way of account payee cheques after due verification. If this direction is not complied with, then the appellants-claimants will be at liberty to execute the award against the respondents.

6. The office is directed to draw the award accordingly at the earliest and preferably within one month from today.

(B.J.Shethna,J)

(Kundan Singh,J)

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